

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

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|---------------------------------------|---|-------------------------------|
| UNITED STATES OF AMERICA, o/b/o | : | |
| HILDA L. SOLIS, Secretary of Labor, | : | |
| United States Department of Labor, | : | |
| Mine Safety and Health Administration | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. EP-11-CA-282 |
| | : | |
| EFRAIN CORCHADO, Individually and | : | |
| d/b/a CORCHADO'S DIMENSIONAL | : | |
| FENCE ROCK, | : | |
| | : | |
| Defendant. | : | |
| | : | |

COMPLAINT

Plaintiff, UNITED STATES OF AMERICA, HILDA L. SOLIS, Secretary of Labor, United States Department of Labor, Mine Safety and Health Administration, by and through the United States Attorney for the Western District of Texas, brings this action against defendant EFRAIN CORCHADO, Individually and d/b/a CORCHADO'S DIMENSIONAL FENCE ROCK, for injunctive relief and to collect civil penalties owed to the United States under the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 801 et seq. ("Mine Act"), and the Federal Debt Collection Procedures Act, 28 U.S.C. §3001, et seq., as applicable.

A. JURISDICTION

Jurisdiction of this action is conferred upon this Court by Sections 108(a)(1)(A) and 110(j) of the Mine Act, 30 U.S.C. §§ 818(a)(1) and 820(j).

B. VENUE

Venue of this action lies in the United States District Court for the Western District of Texas, El Paso Division, pursuant to §§ 108(a)(1) and 110(j) of the Mine Act, 30 U.S.C. §§ 818(a)(1) and 820(j).

C. EFRAIN CORCHADO, INDIVIDUALLY AND d/b/a
CORCHADO'S DIMENSIONAL FENCE ROCK,
IS AN OPERATOR AND AGENT OF A COAL OR OTHER MINE

1. At all relevant times, defendant EFRAIN CORCHADO was a sole proprietor doing business as CORCHADO'S DIMENSIONAL FENCE ROCK and was engaged in the business of mining crushed and broken stone from the Vista Rock Pickers Quarry ("mine") in El Paso County, Texas, within the jurisdiction of this Court.

2. At all relevant times, defendant EFRAIN CORCHADO, Individually and d/b/a CORCHADO'S DIMENSIONAL FENCE ROCK, was an "operator" of a "coal or other mine," within the meaning of Sections 3(d) and 3(h) of the Mine Act, 30 U.S.C. §802(d) and 802(h).

3. At all relevant times, defendant EFRAIN CORCHADO, Individually and d/b/a CORCHADO'S DIMENSIONAL FENCE ROCK, was an "agent" with respect to the mine and its mining operations, within the meaning of Section 3(e) of the Mine Act, 30 U.S.C. §802(e).

4. At all relevant times, the products of defendant EFRAIN CORCHADO, Individually and d/b/a CORCHADO'S DIMENSIONAL FENCE ROCK's mining operations entered commerce, or the operations or products affected commerce, within the meaning of Section 4 of the Mine Act, 30 U.S.C. §803.

D. THE CIVIL PENALTIES OWED TO THE UNITED STATES

5. Between 2002 and 2010, the Mine Safety and Health Administration ("MSHA") issued in excess of forty (40) citations and orders to defendant CORCHADO'S DIMENSIONAL

FENCE ROCK for violations of the Mine Act or the safety and health standards promulgated thereunder, for which violations MSHA also assessed forty (40) civil penalties pursuant to the Mine Act. These citations and penalties are final orders within the meaning of Sections 105(a) of the Mine Act, 30 U.S.C. §815(a).

6. With respect to the citations referred to in Paragraph 5, above, defendant is liable for unpaid civil penalties plus applicable interest and fees in the total amount of approximately \$33,979.25. The United States is not seeking the collection of an additional approximately \$4,643.61 in penalties, assessments and interest that were assessed prior to 2006.

7. The \$33,979.25 described in Paragraphs 6, above, is due and owing to the United States but have not been paid by defendant as of December 2, 2010.

E. LIABILITY

8. As an operator of the coal or other mine for which the citations and penalties described in Section D, above, were issued, defendant EFRAIN CORCHADO, Individually and d/b/a CORCHADO'S DIMENSIONAL FENCE ROCK, is liable for the unpaid civil penalties pursuant to Section 110(j) of the Mine Act, 30 U.S.C. §820(j).

9. As an operator of the coal or other mine for which the citations and penalties described in Section D, above, were issued, and as an agent of defendant CORCHADO'S DIMENSIONAL FENCE ROCK, defendant EFRAIN CORCHADO, Individually and d/b/a CORCHADO'S DIMENSIONAL FENCE ROCK, is liable for the unpaid civil penalties pursuant to Section 110(j) of the Mine Act, 30 U.S.C. §820(j).

10. As an operator of a coal or other mine for which the citations and penalties described in Section D, above, were issued, but which penalties have not been paid, defendant EFRAIN CORCHADO, Individually and d/b/a CORCHADO'S DIMENSIONAL FENCE

ROCK, should be enjoined from violating or failing or refusing to comply with any order or decision under the Mine Act, and enjoined from failing or refusing to comply with any order or decision, including a civil penalty assessment order, that is issued under the Mine Act.

F. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays for the following relief:

11. A Judgment against defendant EFRAIN CORCHADO, Individually and d/b/a CORCHADO'S DIMENSIONAL FENCE ROCK, for the principal amount of unpaid civil penalties, as well as interest and fees on those penalties owed to the United States for Mine Act violations, in an amount not less than \$33,979.25 together with interest as provided under the Mine Safety Act until judgment and thereafter at the judgment rate provided by law;

12. A Judgment against defendants EFRAIN CORCHADO, Individually and d/b/a CORCHADO'S DEMENSIONAL FENCEROCK, for the 10% surcharge authorized by the Federal Debt Collection Procedures Act, 28 U.S.C. §3011(a);

13. An Order enjoining defendant EFRAIN CORCHADO, Individually and d/b/a CORCHADO'S DIMENSIONAL FENCE ROCK, from violating, failing, or refusing to comply with any order or decision under the Mine Act, and enjoining him, it or them from failing or refusing to comply with any order or decision, including a civil penalty assessment order, that is issued under the Mine Act; and

14. An Order awarding all other appropriate relief.

Respectfully submitted,

JOHN E. MURPHY
UNITED STATES ATTORNEY

By: /S/ Mitchell L. Weidenbach
MITCHELL L. WEIDENBACH
Assistant United States Attorney
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
Telephone: (210) 384-7360
Facsimile: (210) 384-7312
Texas Bar No. 21076600
mitch.weidenbach@usdoj.gov

Of Counsel:

Solicitor of Labor
James E. Culp

Regional Solicitor
Mary Kathryn Cobb
Counsel for Mine Safety & Health

Nancy B. Lerman
Attorney
Texas Bar No. 3846600

U.S. Department of Labor
Office of the Solicitor
525 S. Griffin St., Ste 500
Dallas, TX 75202

Telephone: (972) 850-3100
Facsimile: (972) 850-3101
RSOL No. 11-00010

Attorneys for the Plaintiff